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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,450

05/10/2005

Michael Anthony Pugel

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05/28/2009

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EXAMINER

PARK, JEONG S

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,450	<b>Applicant(s)</b> PUGEL ET AL.	
	<b>Examiner</b> JEONG S. PARK	<b>Art Unit</b> 2454	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/20/2009</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This communication is in response to Application No. 10/534,450 filed on 5/10/2005. The amendment presented on 3/4/2009 is hereby acknowledged. Claims 1-12 and 14-16 have been examined.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al (hereinafter Mason)(U.S Patent No. 6,543,051 B1) in view of Pinder (U.S Patent No. 6,112,074).

Regarding claims 1, 7 and 12, Manson teaches as follows:

A system or a method for inserting alert based information (alert message) into broadcast programming over a program distribution network (digital subscriber television system) comprising (a system for inputting emergency alert messages into a digital subscriber television system, see, e.g., abstract);

A program distributor (application servers, 203 in figure 2) that transmits the broadcast programming (television program) over the program distribution network (broadband network)(MPEG content from the application servers is delivered to a plurality of home communications terminals via a broadband network, see, e.g., col. 2, line 57 to col. 3, line 8);

A network fabric (207, 211 and 220 in figure 2), coupled to the program distributor (application servers, 203 in figure 2), used for transmitting data from the program distributor (QAM modulators, 206 in figure 2, combine the MPEG formatted information from the application servers for delivery as the in-band data, 207 in figure 2, via the transmission medium, 220 in figure 2, see, e.g., col. 3, lines 13-16);

The program distributor (EAS receiver, 105 in figure 3, wherein the application server 203 and EAS 105 and EAC 106 work together as the program distributor) receives the alert based information (see, e.g., col. 4, lines 28-33) and converts the alert from a first format comprising at least one SAME code (SAME (Specific Area Message Encoding) is well-known as a subset of EAS, see, e.g., Gropper (U.S. Patent No. 6,323,767 B1) col. 1, lines 11-21) to a second format compatible with the programming broadcasted via the network fabric (EAS 105 converts the text emergency alert message into a text display file compatible with the digital subscriber system, see, e.g., col. 4, lines 52-58 and steps 406 and 410 in figure 4);

The program distributor inserts the converted alert into the broadcast programming via the network fabric (the converted emergency alert message was sent to the application server at step 414 in figure 4, see, e.g., col. 5, lines 5-6, wherein the application servers distribute the converted emergency alert message with the television program through QAM modulators, 206 in figure 2, with in-band delivery path, 207 in figure 2, see, e.g., col. 3, lines 13-15);

Specifying a region to be alerted by identifying number of counties (the number of counties field specifies the number of the destination counties for the digital emergency alert message, see, e.g., col. 5, line 66 to col. 6, line 2); and

The converted alert is formatted into an MPEG transport packet (the converted emergency alert message was sent to the application server at step 414 in figure 4, see, e.g., col. 5, lines 5-6, wherein the application servers distribute the converted emergency alert message with the television program through QAM modulators, 206 in figure 2, with in-band delivery path, 207 in figure 2, see, e.g., col. 3, lines 13-15) where the packet identifier (PID) in the header of the transport packet identifies the content of the transport packet as being an alert message instead of being at least one of audio information and video information (PID is a 13 bits field indicating the type of the data stored in the packet payload, see, e.g., ISO/IEC 13818-1, Section 2.4.3.3). Therefore it would be obvious to indicate that the stored data is an alert message by using the well-known PID field in the MPEG transport packet.

Pinder further explicitly teaches as follows even though Manson implicitly teaches how to indicate the region to be alerted:

The radio communication system obtains event and locality information, and uses the locality information to transmit the event information to subscribers of that system potentially affected by the event (see, e.g., abstract and figure 3); and

Transmitting the alert information in the form of SAME (a NOAA station broadcasts weather and emergency event information in a digital message using a

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Specific Area Message Encoding (SAME) protocol, see, e.g., col. 2, lines 23-41 and figure 1).

It would be obvious to combine Manson with Pinder in order the system of Manson to leave uninterested geographic region undisturbed and avoid a "Boy Who Cried Wolf" problem for the affected geographic region.

Regarding claim 2, Manson teaches as follows:

The converted alert (generated from EAS and EAC, 105 and 106 in figure 3 respectively and sent to the application server, 203 in figure 2 and figure 3) and the programming broadcasted via the network fabric (transmission medium, 220 in figure 2) are capable of being rendered on at least one of: a display device and an audio based device (the converted message, which was sent from the application servers, 203 in figure 2 and figure 3, and television program are transmitted to the TV, 256 in figure 2, by the HCT, 250 in figure 2, for display to the subscriber, see, e.g., col. 3, lines 19-26).

Regarding claims 3, 8 and 14, Manson teaches as follows:

The alert message received is an audible based message that is converted into data capable of being broadcasted over the network fabric for rendering on an audio device (emergency alert message with an audio file is converted by EAS, 105 in figure 3, into an audio file compatible with the digital subscriber system which is TV, 256 in figure 2, inherently comprises audio and display devices, see, e.g., col. 4, lines 60-65).

Regarding claims 4, 9 and 15, Manson teaches as follows:

The program distributor adds supplemental information (elements) to the alert

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based information for broadcast; the supplemental information selected is based on data in the alert based information (the elements associated with an emergency alert message, see, e.g., col. 5, lines 23-29).

Regarding claims 5, 10 and 16, Manson teaches as follows:

The supplemental information selected is determined by the geographic region corresponding to the alert based information (identification code of each county that is to receive the digital emergency alert message in accordance with the FIPS code, see, e.g., col. 6, lines 3-6) and the alert class (event code in table 2) of the alert based information (see, e.g., col. 6, lines 18-28 and table 2).

Regarding claim 11, Manson teaches as follows:

The programming is broadcasted in an MPEG compatible data stream (see, e.g., col. 3, lines 9-11).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al (hereinafter Mason)(U.S Patent No. 6,543,051 B1) in view of Pinder (US Patent No. 6,112,074), and further in view of Adler (US Patent No. 6,505,203).

Regarding claim 6, Manson teaches as follows:

The message name field provides a unique emergency alert message (see, e.g., col. 5, lines 64-65); and

The event code field defines event codes (see, e.g., col. 6, lines 18-28 and table 2).

Therefore, Manson implicitly teaches to include any type of alert message upon request by adding an event code field with a proper message name field to identity the alert message as the alert related to a missing person.

Manson in view of Pinder do not explicitly teach the alert class is including an alert related to a missing person.

Adler teaches as follows:

A system to provide an intelligent and powerful missing person notification for specific geographical areas by being distributed instantaneously to reach a large segment of the community including TV and radio stations (see, e.g., col. 1, line 65 to col. 2, line 23).

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Adler with Mason in view of Pinder to include an alert related to a missing person in order to quickly distribute a missing person notification within the specific geographical areas of the highest probability of containing the lost person.

### ***Response to Arguments***

5. Applicant's arguments filed 3/4/2009, with respect to claims 1-12 and 14-16 have been considered but are moot in view of the new ground(s) of rejection.

A. Summary of Applicant's Arguments

In the remarks, the applicant argues as followings:

1) Applicants conclude that "out of band" information of Manson would also be used if one were to consider the alternative approach in Pinder of transmission where specific subscribers are identified for the transmission of alert information (Pinder, col. 3, line 64 to col. 4, line 11). Once again, if the Examiner's suggestions were used, in view of Manson and Pinder, the transmitter system would require much more structure where the PIDs of the transport stream (from Manson) would need to be read in the transmission system in Pinder as to determine, once again, what cell towers need to be used to transmit such messages. One of the ordinary skill in the art would do the opposite of what the Examiner suggests in Manson and Pinder, and put the alert message (of Manson) into out of band information, so that the transport stream (as in band information) would not need to be consulted or require the use of a PID table if one had to select particular cell towers in which to transmit an alert message.

2) In the rejection to Claim 6, the Examiner states that "Manson implicitly teaches to include any type of alert message upon request by adding an even code field with a proper message name field to identify the alert message related to a missing person." Hence, the Examiner concludes that it would be obvious to incorporate "any" message in the system of Manson in view of Pinder. This is not the correct legal standard to apply 35 U.S.C. 103(a), as such a claimed feature of "including an alert related to a missing person" is still missing from the Examiner's rejection. Manson is pretty exhaustive in terms of the type of messages being taught, see Table 2, where such warnings are weather related. The combination of Manson in view of Pinder is not as general as what the Examiner states, rather Manson in view of Pinder suggest a limitation to the

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messages being transmitted as being only weather related, and nothing else. This is not as expansive as what the Examiner states in the rejection and would not cover "missing person" information as claimed in Claim 6.

B. Response to Arguments:

In response to argument 1), Manson teaches as follows:

A system for inputting emergency alert messages into a digital subscriber television system (see, e.g., abstract); and

Specifying a region to be alerted by identifying number of counties (the number of counties field specifies the number of the destination counties for the digital emergency alert message, see, e.g., col. 5, line 66 to col. 6, line 2).

Therefore, Manson teaches applicant claimed in band information by inserting emergency alert messages into a television system.

Pinder further explicitly teaches how to indicate the region to be alerted as follow:

The radio communication system obtains event and locality information, and uses the locality information to transmit the event information to subscribers of that system potentially affected by the event (see, e.g., abstract and figure 3); and

Transmitting the alert information in the form of SAME (a NOAA station broadcasts weather and emergency event information in a digital message using a Specific Area Message Encoding (SAME) protocol, see, e.g., col. 2, lines 23-41 and figure 1).

In response to applicant's argument that Pinder is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Pinder teaches the deficiency of Manson reference by providing specific method of how to indicate the region to be alerted.

In response to argument 2), claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al (hereinafter Mason)(US Patent No. 6,543,051 B1) in view of Pinder (US Patent No. 6,112,074), and further in view of Adler (US Patent No. 6,505,203) as presented above.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEONG S. PARK whose telephone number is (571)270-1597. The examiner can normally be reached on Monday through Friday 7:00 - 3:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. P./

Examiner, Art Unit 2454

May 13, 2009

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2454